

MARVIN MATHIS - CROSS BY KOLANO

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1 Q. "Question: Do you have that number written down  
2 anywhere?

3 "Answer: Yeah, in my bag at home."

4 Is that true?

5 A. Yes.

6 Q. "Question: Do you have any objection, keeping your  
7 constitutional rights in mind, that this detective and members  
8 of the Elizabeth Police Department recover the pager number  
9 from the plastic bag and recover the pants you were wearing at  
10 the time of this homicide?"

11 "Answer: No objection."

12 Is that accurate?

13 A. Yes.

14 Q. And are those the words you told the police?

15 A. Yes.

16 Q. Now, you would agree with me in this nine page  
17 statement, nowhere in this statement does it mention they want  
18 to go to your house to look for a gun?

19 A. They asked me that. Doesn't say there, but they asked me.

20 They asked my mother did she ever see me with a gun or  
21 anything. Then the detective asked Do you keep a gun in the  
22 house? She said no, she never seen me with a gun.

23 Q. Now, at this point in time, by the way, your mother is  
24 in, in this interview while you are telling all of these lies,  
25 right?

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1 A. Yes.

2 Q. And at this point in time they give you that form, and  
3 your mother leaves and goes and gets your pants and look for  
4 the beeper number?

5 A. Phone?

6 Q. At this point in time is that when your mother leaves  
7 to go to your house?

8 A. Yes. That's when she went over with detective.

9 Q. Police left you in a room and had you look through a  
10 lot of books to see if you can find picture of Antwan?

11 A. Yes.

12 Q. Nobody mistreated you during that time, right?

13 A. No.

14 Q. You heard Detective Koczur testify to that, right?

15 A. Yes.

16 Q. So on that point you would agree with his testimony  
17 that they left you alone to look at some pictures?

18 A. Yes.

19 Q. And then there came a point in time where your mother  
20 came back, and the police talked to you again, right?

21 A. Yes, that's when they came back with this bag, you know, my  
22 bag and pants I had on.

23 Q. And again the police gave you your rights, read your  
24 rights to you again?

25 A. Yes.

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1 Q. And again you signed each of, you initialed each of  
2 them and signed your rights, right?

3 A. Yes.

4 Q. And at that point the police said that they think you  
5 are lying, right?

6 A. Yes.

7 Q. And they told you that if you know anything, please  
8 tell them the truth, right?

9 A. Yes.

10 Q. And at this point --

11 A. That's when he asked, you know, want to talk to your son in  
12 private -- and he step out the room. That's when my mother  
13 said if you know something please tell them.

14 Q. So at this point your mother says please tell them the  
15 truth if you know it?

16 A. Yes.

17 Q. And at this point at your mother's urging you say,  
18 okay, now I will tell you the truth, the whole truth, and  
19 nothing but the truth?

20 A. Yes.

21 Q. And you give the second statement. And I think what  
22 you told in your second statement that is the truth?

23 A. Yes.

24 Q. Now, you know April Diggs about two years right, or at  
25 that time you knew her two years?

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1 A. Yes.

2 Q. And you knew Renee Diggs couple of months?

3 A. Yes.

4 Q. And you knew Antwan about six years?

5 A. Six or five years.

6 Q. And April never did anything to hurt you before this  
7 day, right?

8 A. No.

9 Q. Renee never did anything to hurt you before this day?

10 A. No.

11 Q. I am going to give you S-4, which is your second  
12 statement.

13 And actually I guess first thing I should do, point out  
14 that your initials are on the bottom page here?

15 A. Yes.

16 Q. And on the next page your initials on the bottom?

17 A. Yes.

18 Q. And on the next page your initials on the bottom?

19 A. Yes.

20 Q. And on the next page your initial are on the bottom?

21 A. Yes.

22 Q. And on the next page your initials are on the bottom?

23 A. Yes.

24 Q. And on the next page your initials are on the bottom?

25 A. Yes. But that's --

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1 Q. Your initials where I am pointing to?

2 A. See, that's not my handwriting right there.

3 Q. You picked that out?

4 A. Yes, I spot it yesterday.

5 Q. Next page your initials are on the bottom?

6 A. Yes.

7 Q. And next page your initials are on the bottom?

8 A. Yes.

9 Q. Last page is your signature, right?

10 A. My signature and my mother's signature.

11 Q. Okay. And this is the statement that you swore is the  
12 truth, right?

13 A. Yes.

14 Q. And you took an oath that it was the truth just like  
15 the oath you took before you got on this witness stand, right?

16 A. Yes.

17 Q. I swear that everything in this statement is the  
18 truth, the whole truth, and nothing but the truth?

19 A. Yes.

20 Q. Now, I am going to turn to page six, because that is  
21 the only place that your initials appear twice, right?

22 A. Yes.

23 Q. And in fact right above your initials is the word  
24 "Yes." Correct?

25 A. Yes, but it's not my handwriting.

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1 Q. You didn't write Yes? But you did put MM?

2 A. They told me to put MM.

3 Q. Am I being accurate here:

4 "Question: So all four of you committed this  
5 robbery?

6 "Answer: Yes."

7 Did I read that accurately?

8 A. You read accurately, yes.

9 Q. And A for Answer is written in hand, not typed, right?

10 A. Yes.

11 Q. And the Yes is written in hand. Right?

12 A. Yes.

13 Q. And you initialed that handwritten version, right  
14 there.

15 A. They told me put my initials there.

16 Q. You knew that was the question: So all four of you  
17 committed this robbery? Answer: Yes. You put your initials  
18 there, right?

19 A. They told me to put it.

20 Q. Was the answer No?

21 A. They just told me put it there.

22 Q. You put it there because that was a written change,  
23 and anything that's, that's written as opposed to type has to  
24 be initialed, right?

25 A. I guess.

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1 MR. FLORCZAK: Two questions there, judge.

2 THE COURT: Sustained. Break that down.

3 Q. All four, so all four of you committed this robbery.

4 Is that true or false?

5 A. That's false.

6 Q. Okay. Then why did you say Yes to the police in this  
7 statement that you said was the truth, the whole truth, and  
8 nothing but the truth?

9 A. I didn't say Yes.

10 Q. Now, when I just showed you when I was going through  
11 these pages you picked up on that right away?

12 A. Yes.

13 Q. You had an opportunity to read this statement before  
14 you signed it, right?

15 A. But I didn't, not in discovery.

16 Q. That day, when you were with the police?

17 A. I didn't notice it.

18 Q. Let me go back. You gave the first statement, right?

19 A. Yes.

20 Q. And after the first statement the police gave it to  
21 you and they gave it to your mom and said read it, right?

22 A. Yes.

23 Q. And you had an opportunity to read it if you wanted  
24 to, right?

25 A. Glance through it.

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1 Q. But they said read it. You chose to glance through  
2 it?

3 A. They was rushing me.

4 Q. They were rushing you, putting words in your mouth and  
5 rushing you?

6 A. They was rushing, Did you finish that? I told them No.  
7 Hurry up.

8 Q. And your mother was there during the first statement?

9 A. Yes.

10 Q. She also read it, right?

11 A. Yes, she read it.

12 Q. Okay. So you knew.

13 Now you give the second statement. They go through the  
14 same procedure. After it's done they give it to you, they give  
15 it to your mom, and say you have an opportunity to read through  
16 the whole thing, right?

17 A. Yes.

18 Q. Okay. And then after you read through the whole  
19 thing, which you do, right?

20 A. Um-hum.

21 Q. And your mom reads through the whole thing, right?

22 A. Um-hum.

23 Then they say okay, you have to initial bottom of each page  
24 to show that these are your words, right?

25 Q. Please say Yes or No, Mr. Mathis, so the court



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1 reporter --

2 A. Repeat the question.

3 Q. After you read through the statement your mom reads  
4 the statement?

5 A. Yes.

6 Q. And then they give you the statement and say to prove  
7 that these are your words we want you to put your initials on  
8 the bottom of each page, right?

9 A. Yes.

10 Q. And you do that because the words in the statement are  
11 now the truth and they are your words?

12 A. Yes.

13 Q. And your mom is present for this entire process?

14 A. Yes.

15 Q. Now, let's see what words are yours that you gave.

16 Page three: "Question: --

17 A. Hold up.

18 Q. Right on the top. Was it your intention, the  
19 intention of Antwan and the intention of April Diggs and the  
20 other female to rob anyone on Elizabeth Avenue?

21 "Answer: Yes."

22 Those are your words, aren't they?

23 A. (Pause).

24 MR. FLORCZAK: I am sorry.

25 MR. KOLANO: Top of page three. Make sure we have the

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1 same page. Right here at the top. I will read it again.

2 Q. Was it your intention, the intention of Antwan and  
3 intention of April Diggs and the other female to rob anyone on  
4 Elizabeth Avenue?

5 "Answer: Yes."

6 Those are your words, right?

7 A. You read it accurately, I said Yes, but I shook my head, I  
8 shook my head No.

9 Q. You shook your head No?

10 A. Yes.

11 Q. And yet you are telling us the police wrote Yes there  
12 even though you shook your head No?

13 A. I guess. Yes.

14 Q. So these aren't your words, that's what you are  
15 saying?

16 A. That part where it says Yes.

17 Q. What you are telling us now these are not your words?

18 A. The part that says Yes that's not my word.

19 Q. You agree you did not make a change when you and your  
20 mother had an opportunity to read the statement?

21 A. I didn't notice it.

22 Q. And your mother didn't pick up on it either?

23 A. I guess not, no.

24 Q. Apparently.

25 "Question: On Elizabeth Avenue was anyone in

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1 possession of a handgun?

2 "Answer: Yes."

3 That's true, right?

4 A. Yes.

5 Q. "Question: How do you know Antwan was in possession  
6 of a handgun?

7 "Answer: Because he showed it to me."

8 A. Yes.

9 Q. That's true, right?

10 A. Yes.

11 Q. "Question: Did he discuss with you and the other  
12 girls about doing a robbery?

13 "Answer: Yes."

14 Is that true?

15 A. I guess.

16 Q. Well, don't guess. Tell us if it's true or not?

17 A. Yes.

18 Q. So the police got that accurate as far as you are  
19 concerned, right?

20 A. As far as I concerned, yes, I guess.

21 Q. "Question: What type of gun did he have?

22 "Answer: A black revolver. The kind that cocks  
23 back."

24 Is that true?

25 A. No.

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1 Q. Okay. What kind of gun did he have?

2 A. I told him it was black and it was a revolver. I didn't  
3 know, you know, they asked did it cock back, you know, I told  
4 them I didn't know. I said yes, I guess, yes.

5 Q. Was it a revolver?

6 A. I don't know that much about guns. I know it was black.

7 Q. So you are telling us this is not your answer: Black  
8 revolver. The kind that cocks back?

9 A. I said a revolver. Yes.

10 Q. Okay.

11 A. But I don't remember saying cocked, the kind of cock back.

12 Q. The police made that up?

13 A. As far as they added to it, I don't know.

14 Q. Do you know of a reason why the police would add to  
15 that, or did they tell you the reason why they would make  
16 something up and add to it?

17 A. No.

18 Q. And at this point the police did not arrest April  
19 Diggs, right, because they only know about April through you?

20 A. Yes.

21 Q. They haven't arrested Renee because they don't know  
22 about Renee, except for you?

23 A. Yes.

24 Q. They don't know about Antwan, or they didn't arrest  
25 Antwan, because they are getting the information about Antwan

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1 from you, right?

2 A. Yes.

3 Q. So can you tell me of a reason why the police would  
4 put false information in your statement, since you are the  
5 first one giving a statement?

6 A. I don't know. They asked me was it revolver or automatic.  
7 I told them I don't know. They was like, you know, sit back  
8 and think, you know. They asked me did I see the gun real  
9 good? I told them I didn't see it that good. They asked me  
10 was it a revolver or automatic. I said I think it was a  
11 revolver. Then he asked me are you sure it was revolver, I  
12 said yes, black revolver.

13 I don't know what revolver or automatic, I don't know how  
14 they, how they work or whatever.

15 Q. Now, it goes on to say,: -

16 "Question: When you were walking up the Avenue, did  
17 there come a point in time when someone suggested who to rob?

18 "Answer: Antwan."

19 Is that true?

20 A. Yes.

21 Q. By the way, when you are giving the second statement  
22 are you confused and scared like you were with the first  
23 statement?

24 A. I was scared because my first time being arrested, you  
25 know, being questioned like this.

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1 Q. But you had your mom there, and your mom was saying  
2 just tell the truth son and everything will be okay. Right?

3 A. Yes. I was still scared, because it was my first time  
4 being arrest.

5 Q. What did Antwan tell you what you were to do during  
6 this robbery?

7 "Answer: He asked me to be a lookout."

8 Is that true?

9 By the way, this refers to the man with the gold chains.

10 A. Yes.

11 Q. Okay. Didn't you tell us today he didn't ask you to  
12 be a lookout as it related to the robbery of the man with gold  
13 chains?

14 A. Yes. But I didn't look out.

15 Yes. But I didn't look out, though.

16 Q. Well, both can't be true. Today you told us he never  
17 asked you to be a lookout. In your statement you say he did  
18 tell you to be a lookout. Which one is true?

19 A. I don't know. Can't say. Can't say.

20 Q. Now, it said, going down to the last question on that  
21 page, Why? Because April noticed a small deli on the corner  
22 and the man was there alone.

23 On the next page: Why wasn't this deli robbed?

24 "Answer: Because I told him I wasn't going to do  
25 it."

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1 That's what you told us today, right?

2 A. Yes.

3 Q. So that's true?

4 A. Yes.

5 Q. And the police put this in your statement, right?

6 A. Yes.

7 Q. And you would agree it makes you look good because you  
8 were not going to be part of the robbery, right? This doesn't  
9 hurt you, this statement, by saying that you weren't down with  
10 the robbery, right?

11 A. I don't know how to answer.

12 Q. Were you down with the robbery of the deli or not?

13 A. No.

14 Q. And police got that down accurately, right?

15 A. That's what I told them.

16 Q. So they weren't afraid to put into your statement  
17 things that made you look good, right?

18 A. I told them what happened. Yes.

19 Q. That's what they typed up, what you told them?

20 A. Yes.

21 Q. "Question: Earlier before this written statement do  
22 you recall telling this detective and your mother that you and  
23 Antwan were looking to rob someone because you wanted to know  
24 how it felt?

25 "Answer: Yes."

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1 A. I never said that.

2 Q. But in your statement you answered Yes, correct?

3 A. No. I shook my head No.

4 Q. So again you are telling us on this, the part that  
5 makes you look bad you shook your head No and the police just  
6 had the typist put in Yes?

7 A. Yes.

8 Q. Even though they put in all the other stuff that helps  
9 you and made you look good, for this they decided to basically  
10 lie, right?

11 A. That's when he was trying to put words in my mouth.

12 Q. He put the word Yes in your mouth, is that right?

13 A. Yes.

14 Q. And when you read over the statement you didn't pick  
15 up on that?

16 A. I told you I was glancing through it. I told you before I  
17 was glancing through it.

18 Q. Your mother also read through it and she didn't pick  
19 up on it either, apparently?

20 A. No.

21 Q. "Question: When you were walking up Elizabeth Avenue  
22 were you and Antwan and the girls looking to rob someone?

23 "Answer: Yes."

24 Now are you telling us that the police also put these  
25 words in your mouth?



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1 A. Yes.

2 Q. Did there come a point in time when the four of you  
3 decided to rob someone else?

4 "Answer: Yes."

5 Isn't that in your statement, the one that you say is the  
6 truth?

7 A. Excuse me?

8 Q. Now, isn't that what you said in your statement, the  
9 statement that you said is the truth?

10 A. That's what it says in the statement. Yes.

11 Like I told you before, the statement is true. But I don't  
12 remember saying Yes.

13 Q. Does that mean you could have said Yes and you don't  
14 remember, or was this another example of you shaking your head  
15 No and police just decided to write Yes?

16 A. I don't remember. But I know -- I don't remember saying  
17 Yes.

18 Q. Did there come a point in time when the four of you  
19 decided to rob someone else?

20 "Answer: Yes.

21 "And where was that?

22 "Answer: Elizabeth Avenue and Sixth Street."

23 Is that true?

24 A. Yes.

25 Q. Okay. "Question: What happened then?"

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1 "Answer: Antwan saw two Spanish boys and Antwan and  
2 April started running after them real hard and me and the other  
3 girl started to jog after them."

4 A. Yes.

5 Q. So here the police put down your words accurately?

6 A. Yes.

7 Q. "Question: Which way did they run on Sixth Street?

8 "Answer: We all went towards First Avenue. But  
9 they outran us."

10 Is that true?

11 A. No.

12 Q. That's a lie?

13 A. Yes.

14 Q. Whose lie is it, yours or police's?

15 A. Detective.

16 Q. So you, what did you tell them?

17 A. I told them they outran April and Antwan. But he didn't  
18 put that in.

19 Q. It's your testimony again police quietly slipped in Us  
20 instead of April and Antwan?

21 A. Yes.

22 Q. Again you missed that when you glanced at your  
23 statement and your mom missed when she read this statement?

24 A. I guess. Yes.

25 Q. Now, it says Was it still your intention at this time

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1 to continue doing the robbery?

2 "Answer: No."

3 Did I read that accurately?

4 A. Yes.

5 Q. Can you explain to me why, if the police are slipping  
6 in all of this language to hurt you, making up lies about you,  
7 why they let you say, No here? Wouldn't it -- Can you explain  
8 to me why they would let you answer this question No, then?

9 A. I don't know.

10 Q. Was it still your intention at this time to continue  
11 doing the robbery? No.

12 The police apparently they got that accurate according to  
13 you, right?

14 A. Yes.

15 Q. But all of this other stuff where you say Yes it's all  
16 just made up to make you looked bad?

17 A. That's when he was putting words in my mouth.

18 Q. Next page: What did Antwan tell you at this time?

19 "Answer: He was going to rob this guy and he asked  
20 me to watch out."

21 Is that true?

22 A. Yes.

23 Q. And who did he want you to watch out for?

24 "Answer: For the cops."

25 Is that true?

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1 A. Yes.

2 Q. Did you do that for him?

3 "Answer: Yes."

4 Is that true?

5 A. No.

6 Q. And you knew he was going to rob this man, is that  
7 correct? Yes.

8 Is that true?

9 A. No.

10 Q. And you did not stop him from doing this robbery. No.  
11 Is that true?

12 A. Yes.

13 Q. Where was April at this time?

14 "Answer: Next to Antwan."

15 Is that true?

16 A. I think so. Yes. Something -- I don't know.

17 Q. What did April do during the robbery?

18 "Answer: She was also a lookout."

19 Is that true?

20 A. Yes.

21 Q. "Also" meaning you and she?

22 A. No.

23 Q. Her and who?

24 A. Her and her cousin.

25 Q. So again on these statements the ones that make you

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1 look bad are words that the police put in and the words that  
2 make you look good are your actual words?

3 A. Correct.

4 Q. Now, you never mentioned April and Renee in your first  
5 statement, do you?

6 A. No.

7 Q. And you don't know of any reason why you just left  
8 them out?

9 A. No.

10 Q. And in your second oral interview, before you start  
11 taking the statement, you don't mention April and Renee, right?

12 A. No.

13 Q. It's only after you start talking that all of a sudden  
14 for the first time you say, oh, one was April, right?

15 A. Yes.

16 Q. And then you, you don't even remember the other girl's  
17 name, but you say it will come to me?

18 A. I forgot, I forgot her name.

19 Q. And you heard Detective Koczur testify about that,  
20 too, right?

21 A. About what?

22 Q. About how you only mentioned the girl's name when you  
23 started the written statement?

24 A. Second statement?

25 Q. Yes.

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1 A. Yes.

2 Q. So you would agree with Detective Koczur on that  
3 point?

4 A. Yes.

5 Q. What was it that triggered your memory all of a sudden  
6 that April and Renee were out there and were part and parcel of  
7 this robbery?

8 A. Excuse me?

9 Q. What is it that made you all of a sudden realize that  
10 April and Renee were involved in the robbery?

11 A. What made me think about their names?

12 You confuse me.

13 Q. I don't want to confuse you.

14 After you talked to your mom and she tells you if you know  
15 something tell them the truth --

16 A. Yes.

17 Q. -- you decide to tell the truth.

18 A. Yes.

19 Q. And then you give, talk to the police before they  
20 start this written statement?

21 A. Yes.

22 Q. And they pretty much get a preview of what you are  
23 going to say?

24 A. Yes.

25 Q. But during that preview you never mentioned April and

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1 Renee?

2 A. First statement?

3 Q. The oral statement before the second statement. After  
4 you looked at the books for a picture. When you are talking to  
5 the police then, before the typist comes in, you never mention  
6 April or Renee, right?

7 A. No.

8 Q. Okay. When the typist comes in, and they are taking  
9 this second statement, you then mention April, right?

10 A. Yes.

11 Q. What jogs your memory so that all of a sudden now you  
12 remember April was involved in this robbery?

13 A. I just told them, I guess, you know, I felt they should  
14 know who else was in it.

15 Q. "Question: What happened between you, Antwan, and the  
16 man that was shot?

17 "Answer: We walked up to the guy." True?

18 A. Where are you? Where are you?

19 Q. I am on page five. Right here.

20 "Question: What happened between you and Antwan and  
21 the man that was shot?

22 "Answer: We walked up to the guy." True?

23 A. No.

24 Q. That's a lie?

25 A. Yes.

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1 Q. What did you tell the police?

2 A. Told them Antwan walked over there.

3 Q. And again the police just, according to you, slipped  
4 in We instead of Antwan?

5 A. Yes.

6 Q. Antwan grabbed him and tried going into his pockets.  
7 Is that true?

8 A. Yes.

9 Q. Okay. Now today, didn't you again yesterday you said  
10 he never tried to go into his pockets?

11 A. He did something, he tried to grab him, something, I don't  
12 know.

13 Q. Then the man slapped Antwan's hand from going into his  
14 pocket: Is that true?

15 A. (Pause) I don't know. I forgot.

16 Q. Then Antwan grabbed the man and the man grabbed  
17 Antwan.

18 That's true because you told us that today, right?

19 A. Yes.

20 Q. Then the man threw a punch at Antwan.

21 That's true, right?

22 A. Yes.

23 Q. Then Antwan threw a punch back at him.

24 That's true, right?

25 A. Yes.



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1 Q. Then Antwan pushed the man off of him, and he took the  
2 gun out and shot him.

3 Is that true?

4 A. Yes.

5 Q. "Question: After the shots went off, and man fell to  
6 the ground, who went through his pockets?

7 "Answer: Antwan."

8 So is that true?

9 A. No.

10 Q. Okay. Now we already know that your first statement  
11 was a complete lie, right? You told us that?

12 A. Yes.

13 Q. And your first statement mentions Antwan going through  
14 the pockets, right?

15 A. Yes.

16 Q. And you told us that was a lie, right?

17 A. Yes.

18 Q. But now this is your second statement, the one you  
19 told us is the truth, and again you are saying that Antwan went  
20 through his pockets?

21 A. That's when detectives putting words in my mouth, they was  
22 asking Did you go in his pockets, Antwan, did the girls, did  
23 two so-called girls go into the pocket. They were just saying  
24 Antwan went into his pocket. I just said I don't know. They  
25 was putting lot of words in my mouth.

MARVIN MATHIS - CROSS BY KOLANO

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1 Q. Why were they --

2 THE COURT: We are going to take a break at this  
3 point.

4 Members of the jury, let me remind you not to discuss  
5 the case among yourselves or with others.

6 We will be breaking for fifteen minutes. You  
7 certainly may leave the courtroom. When you do return, assemble  
8 inside the jury room.

9 THE COURT: Counsel, approach off the record.

10 MR. FLORCZAK: Sure.

11 (Jury withdrew from the courtroom.)

12 (Side bar off the record).

13 (Short Recess).

14 THE COURT: Bring the jurors out, please.

15 (Jury seated in the jury box in the courtroom.)

16 THE COURT: Mr. Kolano.

17 Q. Mr. Mathis, on page six, the one that has the Yes  
18 written on with your initials on the bottom.

19 "Question: How did the gun go off?

20 "Answer: When all three of us were struggling for  
21 the gun."

22 Is that true?

23 A. Point it out to me.

24 Q. Make sure we are literally on the same page. The one  
25 that has the Yes with your initials on the bottom. Okay. Now

MARVIN MATHIS - CROSS BY KOLANO

104

1 up here. How did the gun go off?

2 "Answer: When all three of us were struggling for  
3 the gun."

4 A. Yes.

5 Q. That's true?

6 A. Yes.

7 Q. So this part the police got down accurately?

8 A. Yes.

9 Q. And you indicated there you were struggling for the  
10 gun not struggling with Antwan?

11 A. I was grabbing his sleeve.

12 Q. When the gun went off where was it pointed at?

13 His forehead.

14 Is that true?

15 A. Not really.

16 Q. So did you tell the police a lie?

17 A. No.

18 Q. Did the police make this up as far as you are  
19 concerned?

20 A. They asked me was it, you know, where was it pointed at. I  
21 told them it was like pointed at his forehead and it was going  
22 down. But they didn't add that on.

23 Q. You told them it was pointed at the forehead and they  
24 wrote it?

25 A. I said some more, but they didn't put that in.

MARVIN MATHIS - CROSS BY KOLANO

105

1 Q. While the guy was going down?

2 A. No.

3 Q. You tell us where was the gun pointed. Forget the  
4 statement. You tell us, you were there. You were part of the  
5 struggle. Where was the gun pointed at the man when the shot  
6 went off?

7 A. It was like towards his forehead, then it was like going  
8 across. They were struggling.

9 Q. When the gun actually went off?

10 A. That's when it went off. The first, first shot missed him,  
11 second shot, you know, hit him.

12 Q. Now, you remember before I asked you how long the  
13 struggle took place?

14 A. Yes.

15 Q. And you told me you didn't know how long?

16 A. I think, yes, something like that.

17 Q. Do you remember testifying in that very witness stand  
18 on June 9th, 1998?

19 A. Uh-huhh.

20 Q. Do you remember testifying in another proceeding in  
21 this case on that very witness stand on June 9, 1998?

22 A. Yes.

23 Q. And at that time you were asked a question.

24 And I give you a copy of the transcript.

25 MR. FLORCZAK: Judge, I am going to object here. I

MARVIN MATHIS - CROSS BY KOLANO

106

1 have no transcript. I wasn't supplied with any.

2 THE COURT: Come to side bar.

3 (PROCEEDINGS AT SIDE BAR)

4 THE COURT: Miranda transcript.

5 MR. FLORCZAK: That was nice, judge. I get it now.

6 MR. KOLANO: He was here. This is not discovery type  
7 of thing. This is a proceeding with a transcript.

8 MR. FLORCZAK: If you are going to be using a  
9 transcript, you know, I would like to see it and know about it.

10 THE COURT: Well, everyone has it now.

11 MR. KOLANO: Your Honor has a copy.

12 THE COURT: All right.

13 MR. KOLANO: I will be very brief. Just this one  
14 thing.

15 THE COURT: All right.

16 (SIDE BAR TERMINATED).

17 Q. It was little more than a week ago that you testified  
18 here, right?

19 A. Yes.

20 Q. And you were in this very chair you testified?

21 A. Yes.

22 Q. And you took the same oath that you took here today?

23 A. Yes.

24 Q. And your attorney was present?

25 A. Yes.

MARVIN MATHIS - CROSS BY KOLANO

107

1 Q. You got a court reporter there at that time?

2 A. Yes.

3 Q. Turn to page thirty, please, line sixteen:

4 "Question: What did you tell the police in the  
5 second statement what your involvement was?

6 "Answer: I told the detective, he asked me a  
7 question Did I look out for cops. I told him no, I was too  
8 scared. Then he told me --

9 "Question: I am sorry. You have to speak up.

10 "Answer:. At that time detective asked, asked me  
11 what Antwan did. I told him that he told, he told me to run  
12 across the street look out for cops, and told the other two  
13 girls go up the street, ask the man something."

14 You didn't testify to any of that during this trial in  
15 front of the jury, did you, about telling the girls to go up  
16 and ask the man something.

17 A. I believe I said something like that, I said they went  
18 across the street to ask him something.

19 Q. And you testified to that in front of the jury?

20 A. I believe. Yes.

21 Q. And that's true?

22 A. What, this transcript?

23 Q. It's true that Antwan told the girls to go up to the  
24 man and ask him something?

25 A. Yes.

MARVIN MATHIS - CROSS BY KOLANO

108

1 Q. What did he tell them to ask him, if you know?

2 A. I don't know.

3 Q. The girls went up to talk?

4 A. Asked something, but I didn't look.

5 Q. Did they come and report back?

6 A. To the man? No.

7 Q. To Antwan?

8 A. No. When he told to look out for cops, two girls, they  
9 left, they went across the street, asked the man something,  
10 that's when I ran, that's when I went across the street.  
11 That's next to this building, brown building between the door.  
12 That's when Antwan went across the street.

13 Q. So the girls, are you telling me the girls did go up  
14 to the man who was eventually shot and appeared to talk to him?

15 A. They said something to him. I don't know what they said.

16 Q. And then the two girls left from talking to him, is  
17 that what you are telling us?

18 A. Yes.

19 Q. And they came back to where Antwan was?

20 A. No. You confuse me.

21 Q. Did the girls go up to the man?

22 A. Yes.

23 Q. Did the girls talk to the man?

24 A. They said something to him, but the man didn't respond back  
25 to them.

MARVIN MATHIS - CROSS BY KOLANO

109

1 Q. Did the girls return to where Antwan was?

2 A. No.

3 Q. Did the girls return to where you were?

4 A. No.

5 Q. Did the girls walk away?

6 A. Yes.

7 Q. Where did the girls walk?

8 A. They walked towards the end, like, East Jersey. They was  
9 going up East Jersey.

10 Q. Where were you when the girls walked away from the  
11 man?

12 A. That's when I ran across the street, I was standing by  
13 brown building at this door.

14 Q. Where were you in relation to Antwan?

15 A. Antwan he was still, when I ran across the street that's  
16 when he ran across the street to where the man was at.

17 Q. Okay. You were on the opposite side of the street  
18 when Antwan ran across to the victim?

19 A. Same side.

20 Q. Continuing on, on the bottom:

21 "Then they just kept on walking. So at that time the two  
22 girls, they asked the man a question, the man didn't respond to  
23 them. Then that's when I stood by, almost close to the Chinese  
24 store. That's when Antwan ran across the street and told the  
25 man to empty his pocket. Man just looked at him."



MARVIN MATHIS - CROSS BY KOLANO

110

1 Is that true?

2 A. Yes.

3 Q. Then Antwan grabbed the man. The man just slapped his  
4 hand down, threw a punch."

5 Is that true?

6 A. I don't remember.

7 Q. You testified to it on June 9th?

8 A. I think so.

9 Q. Today is June 17?

10 A. Yes, I know. Yes.

11 Q. Then the man said -- No. Man threw a punch at Antwan.

12 MR. FLORCZAK: I object. Doesn't say the man said no.  
13 I would ask you.

14 Q. Then the man -- no. Man threw a punch at Antwan.  
15 Antwan threw a punch at Antwan. Is that true?

16 A. Yes.

17 Q. Then that's when Antwan pull out the gun out of his  
18 pants. Is that true?

19 A. Yes.

20 Q. And he was about to shoot him. They were struggling.  
21 Is that true?

22 A. Yes.

23 Q. They were struggling like for good two minutes.

24 Was that true?

25 A. Yes.

MARVIN MATHIS - CROSS BY KOLANO

111

1 Q. Now, earlier today you told us you didn't know how  
2 long the struggle took place. Did you lie to us today?

3 A. No.

4 Q. Did you lie when you were under oath on that witness  
5 stand June 9?

6 A. No.

7 Q. You just forgot between June 9 and today that it was  
8 two minute struggle?

9 A. Yes.

10 Q. But you remembered on June 9th some two and a half  
11 years afterwards that it was two minute struggle?

12 A. Because you refreshed my memory reading the transcript.

13 Q. So now you are watching these two men struggle for two  
14 minutes, right?

15 A. Um-hum.

16 Q. And you don't intervene, you watch it for at least two  
17 minutes?

18 A. Yes.

19 Q. And that's when I realized they were struggling.  
20 That's when I went to try to stop the struggle, and the gun  
21 went off.

22 Is that true?

23 A. Yes.

24 Q. And today didn't you tell us the gun went off first  
25 and that's when you went over?

MARVIN MATHIS - CROSS BY KOLANO

112

1 A. I told you --

2 Q. Didn't you tell the --?

3 A. I told you first shot missed. You know, they were  
4 struggling, that's when I grabbed his arm and gun went off. I  
5 didn't say nothing I never said that before.

6 Q. You didn't say that you were standing by the Chinese  
7 store, when the first shot went off I am talking about. Not in  
8 your transcript. I am talking about today.

9 A. No, I didn't say that today.

10 Q. Did you ever say that?

11 A. Not that I remember.

12 Q. Next question: Where were you when the gun went off?

13 "Answer: I was close by the Chinese, almost near  
14 the Chinese store."

15 That's what you testified to under oath.

16 A. It's almost like by Chinese store, yes.

17 Q. First gunshot went off where were you?

18 A. I told you before. I was right by the building, between  
19 the door. Chinese restaurant is next to the brown building.

20 You understand me now, right?

21 Q. And then there was the struggle for two minutes?

22 A. Yes. First shot missed him. Then soon I ran over there, I  
23 grabbed him, I asked him What you doing? That's when the shot  
24 went off.

25 Q. "Question: You said you just went there to stop the

MARVIN MATHIS - CROSS BY KOLANO

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1 struggle and the gun went off. Were you basically also  
2 struggling?

3 "Answer: No."

4 Today you told us you were struggling.

5 Which is true?

6 A. I was struggling.

7 Q. You agree -- ?

8 MR. FLORCZAK: Let him finish.

9 A. I don't recall that struggle. I just grabbed his, his arm,  
10 and the gun went off. So how is that a struggle?

11 Q. Question was, you said you just went there to stop the  
12 struggle?

13 A. Yes.

14 Q. And the gun went off. Were you basically also  
15 struggling? No.

16 And you are telling us you were not struggling?

17 A. Yes.

18 Q. Didn't you tell us in your other statement, page six,  
19 How did the gun go off?

20 "Answer: When all three of us struggling for the  
21 gun."

22 Today you told us that was the truth.

23 A. Page six?

24 Q. Page six of your second statement. We went over this  
25 a couple of minutes ago.

MARVIN MATHIS - CROSS BY KOLANO

114

1 A. Repeat the question again.

2 Q. Did you not say in your second statement:

3 "Question: How did the gun go off?

4 "Answer: When all three of us were struggling for  
5 the gun."

6 A. Says in the statement, but I don't remember saying it.

7 Q. You told us less than an hour ago that that was  
8 accurate.

9 A. It's accurate, yes, the question accurate, but I don't  
10 remember saying it.

11 Q. Well, does it make sense to you that it had to come  
12 from you, since Officer Koczur, Detective Koczur wasn't there  
13 and he just luckily got it down accurately?

14 A. He wasn't there?

15 Q. Wasn't there when you shot Mr. Saraiva?

16 A. No, he wasn't there.

17 Q. Who was when you shot him?

18 A. When I shot him?

19 MR. FLORCZAK: Objection. There is no testimony --

20 MR. KOLANO: Certainly was, from two witnesses.

21 MR. FLORCZAK: My client, that he shot him?

22 THE COURT: Obviously, that's a fact question for the  
23 jury to decide. The jury, I am sure, understands that it is  
24 not what's contained in questions that counts. That's not  
25 evidence.

MARVIN MATHIS - CROSS BY KOLANO

115

1 Q. Next question: Exactly where were you in relationship  
2 to Antwan when the gun went off?

3 "Answer: I can't remember."

4 Now, on the 9th you couldn't remember where you were when  
5 the gun went off.

6 A. Can't remember how many feet.

7 Q. Question wasn't how many feet, says exactly --

8 A. How far, I mean?

9 Q. Let's read the question again: Exactly where were you  
10 in relationship to Antwan when the gun went off?

11 "Answer: I can't remember."

12 Did I read that accurately?

13 A. Yes, you read it accurately.

14 Q. Doesn't ask you how many feet, does it?

15 A. No.

16 Q. Says where were you?

17 A. Where I was. I told him.

18 Q. But here on the 9th you couldn't remember and today  
19 you can. What refreshed your recollection between June 9 and  
20 today June 17th?

21 A. I thought about it.

22 Q. You hadn't thought about it for two and a half years?

23 A. I back tracked.

24 Q. You have no motive to hurt Antwan Harvey, do you?

25 A. No.

MARVIN MATHIS - CROSS BY KOLANO

116

1 Q. And as far as you know he has no motive to hurt you?

2 A. No. He is way older than me. At that time he was way  
3 older than me.

4 Q. Please, if you could just answer the question.

5 MR. FLORCZAK: Judge, I think he should be allowed.

6 MR. KOLANO: To give a speech, your Honor?

7 MR. FLORCZAK: To explain his answer.

8 MR. KOLANO: Your Honor, he has counsel for redirect  
9 examination.

10 THE COURT: Mr. Kolano, restate the question, give the  
11 witness an opportunity to answer.

12 Q. By the way, is this the type demeanor you had with  
13 Detective Koczur with the interview?

14 A. Excuse me?

15 Q. The type of demeanor you are demonstrating. Did you  
16 act the same with Detective Koczur as you are with me when I am  
17 asking questions? Same level of cooperation?

18 A. Yes.

19 Q. Same level of understanding?

20 A. Yes.

21 Q. As far as you know, Antwan Harvey has no motive to  
22 hurt you, correct?

23 A. No.

24 Q. As far as your telling us, you have no motive to hurt  
25 Antwan Harvey?

MARVIN MATHIS - CROSS BY KOLANO

117

1 A. No. How can I hurt him? He is way bigger than me.

2 Q. Yes or no question.

3 A. No.

4 Q. You have no motive to hurt Renee Diggs, correct?

5 A. No.

6 Q. As far as you know, she has no motive to hurt you,  
7 correct?

8 A. No.

9 Q. You have no motive to hurt April Diggs, correct?

10 A. No.

11 Q. As far as you know, she has no motive to hurt you?

12 A. No.

13 Q. You have no motive to hurt Sharlama Brooks?

14 A. No.

15 Q. As far as you know, she has no motive to hurt you?

16 A. No.

17 Q. You don't even know Miss Janice Sutton, the guidance  
18 counselor, is that correct?

19 A. I don't know her, but I seen her, but I didn't have a  
20 conversation with her.

21 Q. Let me ask you this. Do you have a motive to hurt  
22 her?

23 A. No.

24 Q. As far as you know, does she have a motive to hurt  
25 you?



MARVIN MATHIS - CROSS BY KOLANO

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1 A. No, not that I know of.

2 Q. And yet you heard all of these people testify in ways  
3 that were damaging to you, that hurt you?

4 A. That hurt me?

5 Q. Yes.

6 A. Explain, explain some more.

7 Q. You don't understand her?

8 A. I don't understand what you are saying.

9 Q. You heard that, you heard April Diggs say that you  
10 were the person who fired the shot, correct?

11 A. Yes, I heard that.

12 Q. You are telling us that's a lie?

13 A. Yes.

14 Q. You heard April Diggs say you returned to Migdalia's  
15 house after the shooting?

16 A. Yes.

17 Q. And you are saying that's a lie?

18 A. Yes.

19 Q. And you are saying that as far as you know April has  
20 no motive to lie about you, right? Yes or no?

21 A. I don't know. I guess. I don't know.

22 Q. You heard Renee Diggs say that you were the person who  
23 shot, correct?

24 A. Yes.

25 Q. And you are telling us that's a lie?

MARVIN MATHIS - CROSS BY KOLANO

119

1 A. Yes.

2 Q. And you heard that Renee Diggs also said that you  
3 returned to Migdalia's afterwards, correct?

4 A. Yes.

5 Q. You are telling us that she is lying about that?

6 A. Yes.

7 Q. And both April and Renee said that you returned to  
8 Migdalia's in their original statements back in 1996, January  
9 25th. So you are telling us right from the get-go they were  
10 lying about you returning to the house, right?

11 A. Yes.

12 Q. You heard Sharlama Brooks testify about how you asked  
13 her for false alibi, correct?

14 A. Yes.

15 Q. And you are telling us that's a lie?

16 A. Yes. The only thing I said to her, that --

17 Q. Just yes or no question, sir.

18 A. Can I continue my answer?

19 Q. Your attorney will ask you questions. I just want to  
20 make sure you don't get confused.

21 A. Repeat the question.

22 Q. You are telling us that when Sharlama testified that  
23 you asked for a false alibi that Sharlama is lying?

24 A. Yes.

25 Q. And that when she said that in her original statement

MARVIN MATHIS - CROSS BY KOLANO

120

1 on the 24th of January, 1996, that that was also a lie?

2 A. Yes.

3 Q. And Sharlama as far as you know has no motive to lie  
4 about you?

5 A. Not to my knowledge.

6 Q. And Miss Sutton testified about how Sharlama was upset  
7 when she was told that her boyfriend Marvin was involved in a  
8 murder?

9 A. No. She didn't say that. Miss Sutton didn't say that  
10 yesterday. She said something about was involved.

11 Q. You didn't hear her say murder?

12 A. No.

13 Q. Involved in what, what did she say?

14 A. I forgot the rest what she said. She said involved; she  
15 never said something about murder.

16 Q. In terms of -- You have no motive to hurt Miss Sutton,  
17 right?

18 A. No.

19 Q. As far as you know, she has no motive to hurt you?

20 A. No.

21 Q. Migdalia Hernandez, you heard her testify, correct?

22 A. Yes.

23 Q. And she testified how you were regularly at her house?

24 A. Yes.

25 Q. And you agree with that, right?

MARVIN MATHIS - CROSS BY KOLANO

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1 A. Yes, yes.

2 Q. And she testified how you were there on that evening  
3 and you left with Antwan Harvey and the girls; do you recall  
4 that?

5 A. I heard. Yes, I remember her saying that. Yes.

6 Q. And you are saying that's incorrect, right?

7 A. Yes, that's incorrect.

8 Q. And she also testified that afterwards you came back  
9 to Migdalia's house, to her house, correct?

10 A. Yes.

11 Q. And you are telling us that's a lie?

12 A. Yes.

13 Q. And she has no motive to hurt you as far as you know?

14 A. Not to my knowledge.

15 Q. And April Diggs said that when you came back that's  
16 when she asked you Why did you shoot that man? And you said,  
17 Because he grabbed my shirt. You are telling us that April is  
18 lying about that?

19 A. Yes.

20 Q. And that, she said that right in the beginning in her  
21 first statement on the 25th of January, 1996?

22 A. Yes.

23 Q. And all of these people as far as you are concerned  
24 are on those points are lying?

25 A. Excuse me?

MARVIN MATHIS - CROSS BY KOLANO

122

1 Q. All of these people on these points are lying?

2 A. Yes.

3 Q. And Detective Koczur, based on how he went through  
4 these statements in great detail, all of the parts that seemed  
5 to hurt you, not be good for you, you are telling us the police  
6 just put those words in the statement?

7 A. Yes. He was putting words in my mouth. And like I point  
8 out to you earlier that, you know, that says something about  
9 all four of you committed this robbery, and he just put answer  
10 in pen. That's not my handwriting there, where the A that's  
11 not my handwriting. Then says Yes, that's not my handwriting.  
12 But two initials that's my handwriting because he told me, he  
13 told me to put it there.

14 Q. Everything in that statement that implicates you in a  
15 robbery was made up by Detective Koczur as far as you know?

16 A. Yes. He was putting words in my mouth.

17 Q. Everything that helps you, says you weren't involved  
18 were your words?

19 A. Yes.

20 Q. And the first statement is basically a pack of lies?

21 A. First statement?

22 Q. Yes.

23 A. Yes, I admit to that.

24 MR. KOLANO: Thank you. Nothing further.

25 THE COURT: Mr. Florczak.

MARVIN MATHIS - REDIRECT BY FLORCZAK

123

1 REDIRECT EXAMINATION BY MR. FLORCZAK:

2 Q. When you say the detective put words in your mouth,  
3 each question the prosecutor referred to in your statements,  
4 the words about what happened, like you were being a lookout,  
5 or all four of you did the robbery, all of those words were  
6 spoken by the detective, isn't that correct?

7 A. Correct.

8 Q. And how you are implicated from that question, because  
9 the answer Yes is written?

10 A. Yes.

11 MR. KOLANO: Objection to the leading nature.

12 THE COURT: Sustained.

13 Q. Antwan Harvey, how tall is he, do you know?

14 A. He is about five ten, five eleven.

15 Q. He is taller than you?

16 A. At that time. Yes. I think. Yes, he was.

17 Q. Now, when the detective questioned you about the gun,  
18 the what's referred to as revolver in your statement, do you  
19 remember that?

20 A. Yes.

21 Q. How many questions did he ask you about the gun?

22 A. He asked me like two questions: Was it a revolver? Was it  
23 automatic? I told him I don't know nothing about guns.

24 Q. When they typed up the statement there is nothing in  
25 the statement about him asking you about a revolver, isn't that

MARVIN MATHIS - REDIRECT BY FLORCZAK

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1 true?

2 A. That's true.

3 Q. Are there questions he asked you that are not, were  
4 not typed up in the statement?

5 A. Questions that he asked me?

6 MR. KOLANO: I object to the leading nature, your  
7 Honor.

8 THE COURT: Overruled.

9 A. Question --

10 Q. Were you asked questions that did not appear in your  
11 statement?

12 A. Yes.

13 Q. And you did not prepare this statement, you didn't  
14 type it up, did you?

15 A. No.

16 Q. Now, you were asked about robberies before the  
17 shooting.

18 The man with the gold, was there any attempt to rob, made  
19 to rob him?

20 A. No.

21 Q. The deli store. Did anybody enter that store and  
22 attempt to rob the deli?

23 A. No.

24 Q. When Antwan and April started running after the  
25 Hispanics, Spanish men, was anything said before that about

MARVIN MATHIS - REDIRECT BY FLORCZAK

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1 doing anything to them?

2 A. No. Antwan took off, took off so fast. Nobody said  
3 nothing, you know. Renee, I mean me and Renee start jogging  
4 after see what's going on.

5 Q. Nothing was said about what was going to happen?

6 A. No.

7 Q. They just took off and ran?

8 A. Yes.

9 Q. You testified about at these two occasions, one  
10 telling him not to do it, and one saying you are not down with  
11 it, you wouldn't get involved. When you told him that on those  
12 occasions, were you aware of him having a gun?

13 A. At that time, no.

14 Q. So that the one occasion after you were aware that he  
15 had a gun that was the occasion when you didn't tell him Don't  
16 to it, isn't that true?

17 A. Yes.

18 Q. During this entire time, walk, or evening did you  
19 intend to rob anyone?

20 A. No.

21 Q. Did you intend to help anyone rob anyone?

22 A. No.

23 Q. When you talk about how long the struggle took place,  
24 I want you to picture this struggle when Antwan first started  
25 struggling with the man until the second shot was fired, and



MARVIN MATHIS - REDIRECT BY FLORCZAK

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1 when I say Now, and start, I want you to give me an idea how  
2 long this took place.

3 Do you understand what I am asking you to do?

4 A. Yes.

5 Q. Okay. So starting from now. (Pause).

6 A. That's about, happened so fast.

7 Q. Well, when you spoke, is that about how long it took  
8 the incident from the time I said Now until you just spoke, is  
9 that about how long?

10 A. No. No. No.

11 Q. Okay. Do you have any idea how long it was?

12 A. It was not that long, though, I know that.

13 Q. In fact in your statement on page six, when they first  
14 asked you how long did this struggle take place, that's on page  
15 six, wasn't your answer, Not that long?

16 A. Yes.

17 Q. So on January 24th, that was your best recollection?

18 A. Yes.

19 Q. Now, when you get your --

20 When you gave your statement you were asked questions and  
21 you gave answers, is that correct?

22 A. Yes.

23 Q. Did anyone ask you whether Antwan threatened shooting  
24 at police officers or passing cops, did anyone ask you that?

25 A. No.

MARVIN MATHIS - REDIRECT BY FLORCZAK

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1 Q. Now, you testified about Antwan acting crazy?

2 A. Yes.

3 Q. When you reached, what was it, Seventh Street and East  
4 Jersey?

5 A. No. Elizabeth Avenue and 6th.

6 Q. No. When you finally got to the end, just before the  
7 man was shot, was Antwan acting crazy at that time, do you  
8 know?

9 A. No.

10 Q. No, you don't know; or, no, he wasn't acting crazy?

11 A. I don't know.

12 Q. Now, at some point Renee turned her jacket inside out,  
13 is that correct?

14 A. Yes.

15 Q. She didn't tell you why she did?

16 A. No.

17 Q. You didn't ask her why?

18 A. No.

19 Q. Now when you were at Migdalia's place earlier was  
20 Antwan there or did you meet Antwan in the street, if you  
21 recall?

22 A. Earlier, he was on the street.

23 Q. When you stopped in her place for thirty-five minutes  
24 was he there then?

25 A. No.

MARVIN MATHIS - REDIRECT BY FLORCZAK

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1 MR. FLORCZAK: I have nothing further. Thank you.

2 THE COURT: Mr. Kolano.

3 RECROSS EXAMINATION BY MR. KOLANO:

4 Q. Just something I overlooked.

5 If you could step down, Mr. Mathis. Just step around here,  
6 please.

7 Give us an idea of, you said you live on Magnolia. At the  
8 time you lived on Magnolia Street.

9 A. Yes.

10 Q. This is Magnolia in Elizabeth, is that accurate?

11 MR. FLORCZAK: Judge, unless this has to do with  
12 redirect, I object.

13 MR. KOLANO: He talked about the path they were taking  
14 in general terms.

15 If not, I would ask latitude just to cover it very  
16 briefly at this point, your Honor.

17 THE COURT: All right. I will allow this.

18 Q. You live on Magnolia Avenue?

19 A. Yes.

20 Q. Okay. Now, this is Magnolia Avenue?

21 A. Yes.

22 Q. Okay. And this is where Migdalia lives on Third  
23 Street?

24 A. Yes.

25 Q. Please just point for us, if you will, where you lived

MARVIN MATHIS - RECROSS BY KOLANO

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1 on Magnolia Avenue?

2 A. On the other side.

3 Q. Is it on this map here?

4 A. See, this is Third right here.

5 Q. Right.

6 A. Right here.

7 MR. FLORCZAK: You have to speak up so we can hear  
8 you, if you are saying something.

9 A. This is, this is, is not the side I live on.

10 Q. Extends up where, this way?

11 A. Up that way. Yes.

12 Q. Where in relationship to where the shooting happened?

13 Let me make this easier. Tell us where you run after the  
14 shooting, show us on the map.

15 A. Right this way, ran.

16 Q. I have to describe for the record. Court reporter  
17 can't. You are running up Seventh Street, right. Up here,  
18 Seventh. You said you are running this way?

19 A. Yes.

20 Q. Then where?

21 A. Ran straight up Seven to Court.

22 Q. Did you make a right to Court?

23 A. Yes.

24 Q. So you are coming this way, and you go that way, you  
25 make a right on Court Street?

MARVIN MATHIS - RECROSS BY KOLANO

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1 A. I run -- a left. I went straight up Court, then I made a  
2 left, I turned and I ran home.

3 Q. And that's at New Point Road that you made the left?

4 A. I don't know. No, it wasn't New Point Road. This is, this  
5 was the side, this is another like another street. I live on  
6 the other side, midtown. This section right here is sort of  
7 like midtown.

8 Q. Magnolia extends further?

9 A. Extends further.

10 Q. Okay. So if I understand you run from here, up  
11 Seventh Street, you make a right on to Court Street, take Court  
12 Street down, and then somewhere here you go to Magnolia Avenue  
13 where your apartment is. Right?

14 A. Yes.

15 Q. You pass by where the wallet is found on South Park  
16 Street. That's the one that goes one street before Court  
17 Street?

18 A. Yes.

19 Q. Did you see Antwan throw the wallet over there?

20 A. No.

21 Q. Are you sure that you ran on Court Street and you  
22 didn't run on South Park Street?

23 A. Sure.

24 Q. You are positive about that?

25 A. I am not positive.

MARVIN MATHIS - RECROSS BY KOLANO

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1 Q. Now, when you started out, you started out at Third  
2 and Bond when you first met up with Antwan, according to you?

3 A. Yes.

4 Q. You would agree Third and Bond is right over here real  
5 close to where Migdalia's house is.

6 A. Third and Bond right here.

7 Q. Here is Bond, here is Third. Now, if I understand,  
8 you correct me, you go all the way down Third to Elizabeth  
9 Avenue, right?

10 A. Yes.

11 Q. Four of you are walking, you go all the way, you go  
12 one, two, three, four, five, six, seven, eight, at least nine  
13 blocks down to Elizabeth Avenue, right?

14 A. Yes, I guess so.

15 Q. And then you go all the way up Elizabeth Avenue, and  
16 various incidents you talked about, and then at one point you  
17 talk about something 6th and Elizabeth?

18 A. Yes.

19 Q. That's right over here where I am pointing to now.

20 A. Yes.

21 Q. And then you continue up Elizabeth, and you turn up on  
22 Seventh, right?

23 A. See, we was walking. I don't remember which way we turn,  
24 which streets.

25 Q. Do you remember, whatever street you were, you turned

MARVIN MATHIS - RECROSS BY KOLANO

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1 left at the pharmacy, and that's when you got to East Jersey  
2 where the shooting happened?

3 Well, let's do it this way. You, once you are coming up  
4 Elizabeth, the most direct way to get to where the liquor store  
5 is is to go up Seventh Avenue.

6 A. Yes.

7 Q. But you are saying you could have come up Sixth and  
8 then cut over on Franklin?

9 A. No, I didn't cut on Franklin.

10 Q. Cut over on Fulton?

11 A. No.

12 Q. Did you perhaps come up 6th and cut over on East  
13 Jersey here?

14 A. No.

15 Q. And Livingston?

16 A. No.

17 Q. Okay. So now does that refresh your recollection that  
18 you probably turned on Elizabeth on to Seventh?

19 A. Probably. I am not saying it is, but probably.

20 Q. From Elizabeth you turned on to East Jersey Street?

21 A. Yes.

22 Q. And from there then you get back on Seventh and you  
23 run and you come down Court?

24 A. Yes.

25 Q. Okay. Thank you.

MARVIN MATHIS - RECROSS BY KOLANO

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1 How tall were you then?

2 A. I don't know.

3 Q. As tall as you are today?

4 A. No.

5 Q. What was Antwan's size in comparison to mine?

6 A. He was a little bigger than you.

7 MR. KOLANO: Nothing further.

8 MR. FLORCZAK: I have nothing further, judge.

9 THE COURT: Thank you. You may step down, take your  
10 seat back at counsel table next to your attorney.

11 MR. FLORCZAK: Judge, I would like to peek out see if  
12 my witness is here.

13 THE COURT: Certainly.

14

15 MR. FLORCZAK: Judge, may we have a brief side bar?

16 (PROCEEDINGS AT SIDE BAR)

17 Side bar.

18 MR. FLORCZAK: The witness, Miss Maria Alvarado was  
19 here. I talked to her this morning. At about 11:30 she wanted  
20 to know if she had a half hour not to be sitting out here. I  
21 said, as long as you are back by twelve we don't have a  
22 problem. It's 12:20. She is not out there right now.

23 THE COURT: Okay.

24 MR. KOLANO: Want to put the mother on? She is here.

25 MR. FLORCZAK: Mother is here. I guess I could put



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1 the mother on.

2 MR. KOLANO: If you are going to, just to save time.

3 MR. FLORCZAK: We are not talking about much time.

4 THE COURT: It's 12:20. We are not really talking  
5 about saving or using up too much time. I don't know how long  
6 you plan on having the mother on the stand.

7 MR. FLORCZAK: I won't be long, but, you know.

8 THE COURT: You may take a little longer. Maybe it  
9 will be better if we just call it the lunch break. Perhaps the  
10 other person will show up during the lunch hour.

11 MR. FLORCZAK: I am sure she will.

12 THE COURT: We can have her testify at 1:30. If not,  
13 we will go with the mother.

14 Other than those two witnesses --?

15 MR. FLORCZAK: That's it.

16 MR. KOLANO: Scheduling wise, I know I need to put the  
17 charge conference on the record. I anticipate we will sum up  
18 today.

19 THE COURT: We can sum up. We are going to have to do  
20 the charge tomorrow and let them deliberate. I just have to  
21 plan on going late tomorrow.

22 MR. FLORCZAK: I would just ask that we don't split up  
23 summations, do them both today, if we can, or both tomorrow.

24 THE COURT: I think based on what you told me it seems  
25 we can do both today. So that will be the plan. Get them both

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1 in. I don't think either one of these witnesses are going to  
2 take very long.

3 MR. FLORCZAK: I know I won't be long, judge.

4 THE COURT: I am hoping that neither of them take  
5 particularly long. And we have only -- We sort of briefly  
6 talked about the charge, but I don't think the charge  
7 conference is going to be extensive either. So I think we will  
8 be able to get into the summations and get them both in today.  
9 And plan on doing the charge first thing tomorrow morning.

10 MR. FLORCZAK: Fine.

11 THE COURT: Okay.

12 (SIDE BAR TERMINATED).

13 THE COURT: Ladies and gentlemen, we are going to  
14 break for lunch.

15 Let me remind you again not to discuss the case among  
16 yourselves or with others.

17 I will excuse you to the jury room. Collect your  
18 personal belongings, wait for the officer to release you. And  
19 then plan on returning for the resumption of the trial at 1:30.  
20 You are excused to the jury room.

21 (Jury withdrew from the courtroom.)

22 THE COURT: All right. Mr. Mathis can be escorted  
23 out. The jurors are in the jury room.

24 (Luncheon Recess).

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## C E R T I F I C A T E

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